Supreme Court, U.S.
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In The
Supreme Court of the United States

MICHAEL EARL CONELY
Special Appearance in propia persona
Petitioner
CONELY TRANSPORT
Petitioner
Co petitioner United States

vs.

TOWNSHIP OF YORK; PATRICK WANTY; JOHN HARGROVE; MICHAEL J. CROSSEY; SALLY B. DOAHUE; STATE OF MICHIGAN; JOHN ENGLER, Governor of the State of Michigan; JENNIFER GRANHOLM; UNITED STATES OF AMERICA; U.S. ATTORNEY GENERAL FOR THE EASTERN DISTRICT OF MICHIGAN; ATTORNEY GENERAL OF THE UNITED STATES; JOHN ASHCROFT, United States Attorney General
Respondents - Intervenors

ON PETITION FOR WRIT OF CERTIORARI IN ERROR TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI IN ERROR

Michael Earl Conely and
CONELY TRANSPORT
c/o 8201 Allen Road
Fenton, Michigan state, in the united States [48430]
Petitioner
1-(810) 229-6107

QUESTIONS PRESENTED

This is an action at law having Political Questions in Equity raising several question of controlling questions of law under several Acts of the Congress of the United States as the petitioner argues in his petition for Writ of Certiorari before this Supreme Court of the United States.

The first of these question is whether the trial judge violation F.R.Civ. P. Rules 53 and 54 the petitioner argues that the trial judge Paul D. Borman did in fact violate Rules 53 and 54 and that this violation is a conflict between the circuit courts. Second) Petitioner raises the question of standing under the doctrine of Article III standing that is a requirement of bringing an Article III question of actual standing. The petitioner argues the fact of standing as a party of actual standing before this Article III court of the united States. Third) Whether the Tax Injunction Act bars the sovereign United States for being a party in this cause of action again the petitioner says that the united States is a real party of action in this civil cause of action.

The original filing of the civil cause of action is pursuant to Qui-tam and the government was given 60 days in

which to intervene. The government declined to intervene and again the district court denied petitioner the right of prosecution this case of action in his own name and in the name of the government of the united States and has argued this on appeal.

The court settled this argument in the cases cited by petitioner and the fact that the United States has the right to sue to protect the instruments of the United States for unlawful collection of State taxes. This instruments of the United States is invested in one International HOUGH 4370007U002010 X, TD 25G HOUGH Dozer that was seized by the Defendants-Respondents under State of Michigan taxing statutes that were challenges on constitutional grounds.

In spite of the civil cause of action the Defendants-Respondents would not relinquish the HOUGH Dozer to Petitioner. The Defendants-Respondents conducted a Sheriff's tax sale and sold this HOUGH Dozer to the highest bidder without a judicial order to sell as required by the 14th Amendment of the Constitution of the United States. The petitioner is shocked by the actions of the Defendants-Respondents and has waited patently for this civil cause of action to reach this Supreme court of the united States. As such, this petition presents valuable question of law and equitable right of the petitioner that are of great concern for himself and other Natural Americans as Citizens of the United States, and

therefore Michael Earl Conely, Petitioner request this court review this Petition for Certiorari and aid this Petitioner in answers the questions presented as the following issues:

I. Whether Judge Paul D. Borman is in error when the Report of the Master was adopted see F.R.Civ. Pro. , Rule 53 and Rule 54. Petition alleges an actual conflict between the federal circuits of the Sixth Circuit Court of Appeals of the United States, citing Paul D. Borman not in errorand the decisions of the Supreme Court of the United States? Petitioner says "Yes"

A. Adopting the Master Report and Recommendation violates Rule 53 and 54 of the F.R.Civ. P. and the due-process of Michael Earl Conely of a Judicial determination of the mixed Question of Facts and Conclusion of Law in before an Article III § 2, court of the united States.

II. Michael Earl Conely, and d/b/a/ CONELY TRANSPORT claim of actual injury and procedural due process were supported by Fact and law under the Doctrine of Article III Standing

III. Whether the Tax Injunction Act bars the United States as Co petitioner from protecting it's instruments, United States currency in the hands of the private Citizen Michael Earl Conely as an investment in the International HOUGH 4370007U0020102X, TD 25G HOUGH Dozer? Petitioner says "Yes"

PARTIES TO THE PROCEEDINGS

Petitioner(s) and Co petitioner

This proceeding in the Supreme Court of the United

States involves a Petition for Writ of Certiorari by Writ of Error to the United States Court of Appeals for the Sixth Circuit Court Civil Case No. 03-1533. The parties for the Petition for Writ of Certiorari is The Petitioner(s) Michael Earl Conely and CONELY TRANSPORT d/b/a/ c/o 8201 Allen Road, Fenton, Michigan state, in the United States. Petitioner Michael Earl Conely and CONELY moves this court by special appearance, propia persona.

Co petitioner. The sovereign United States. The Executive Office of the President of the United States is at 1600 Pennsylvania Avenue N.W. Washington, district of Columbia, 20500. 1600

Under and by Rule 29 (4) the Solicitor General of the United States of America is named and served as the Department of Justice, 10th and Constitutional Ave. N.W. Washington in the city of Washington, in the district of Columbia the seat of the government of the United States.

Respondents

The Respondent, Charter Township of York a.k.a. York Charter Township doing business 1150 Stoney Creek Road, Milan, Michigan. The Respondent PATRICK WANTY a.k.a Patrick Wanty, is doing business at 1150 Stoney Creek Road, Milan, Michigan. The Respondent, JOHN HARGROVE a.k.a. John Hargrove is the Secretary for Charter Township of York

a.k.a. York Charter Township herein after known as Mr. Hargrove. Mr. Hargrove is doing business at 1150 Stoney Creek Road, Milan, Michigan. The Respondent, MICHAEL J. CROSSEY a.k.a Michael J. Crossey is the Vice Chair person for Charter Township of York a.k.a. York Charter Township is doing business at 1150 Stoney Creek Road, Milan, Michigan. The Respondent, SALLY B. DONAHUE a.k.a Sally B. Donahue, is the Treasurer for Charter Township of York a.k.a. York Charter Township is doing business at 1150 Stoney Creek Road, Milan, Michigan.

The Respondent The State of Michigan, is named because Michael Earl Conely, and CONELY TRANSPORT d.b.a. are doing private business in the territory of Michigan in the United States. MICHIGAN, and/or THE STATE OF MICHIGAN has a regular place of business at the ROMNEY BUILDING, 111SOUTH CAPITAL AVENUE, LANSING, MICHIGAN. Michigan. The Respondent, Jennifer M. Granholm, as successor to JOHN ENGLER, a.k.a. John Engler, as Governor of the de facto STATE OF MICHIGAN. THE STATE OF MICHIGAN, in the fiction, maintains a regular place of business at the ROMNEY BUILDING, 111 SOUTH CAPITAL AVENUE, LANSING, MICHIGAN. The Respondent, Michael A. Cox, Attorney General, as successor to, JENNIFER M.. GRANHOLM, a.k.a. Jennifer M. Granholm,

Michigan state Attorney General, is the Chief Prosecuting Attorney for the State of Michigan. Michael A. Cox has a regular place of business at the Law building, 525 Ottawa, Lansing, Michigan state/ State of Michigan.

The Respondent Intervenor, United States Department of Justice, is located at Tenth Street and Constitutional Avenue Northwest, Washington, District of Columbia. The Respondent, Intervenor, United States Attorney General, JOHN ASHCROFT, a.k.a. John Ashcroft, Chief prosecuting Attorney General for the United States of America. The Respondent, Intervenor, United States Department of Justice; United States Attorney Eastern District of Michigan, has a regular place of business at 211 West Fort Street, Detroit Michigan.

Under and by Rule 29 (4) the Solicitor General of the United States of America is named and served as the Department of Justice, 10th and Constitutional Ave. N.W. Washington in the city of Washington, in the district of Columbia the seat of the government of the United States.

CONSTITUTIONAL PROVISIONS STATUTES, RULES AND TREATIES INVOLVED.

The constitution of the United States, as amended of the

original Constitution of 1776, fifth and fourteenth amendment of the Bill of Rights of the Congress of the United: States of Article the third; of the Article the seventh - - - in part nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation, of the Article the eleventh; of the Article the twelfth and the original thirteen amendment of the original Constitution of the United States for the original State of the Union of the United States; 28 U.S.C. § 1331; 28 U.S.C. § 1334 (3); 1341; 28 U.S.C. § 1; of Article III § 2 of the Constitution of the United States

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Michael Earl Conely as a natural Citizen of the sovereign United States respectfully petitions the Supreme Court for writ of Certiorari to review the Sixth Circuit Court of Appeal's Order affirming the district court's judgment, entered on April 1, 2003

OPINION BELOW

The opinion of the United States Court of Appeals Mandate to the petition as dated October 23, 2003 (see App. B).

The opinion of the United States Court of Appeals for the Sixth Circuit Order affirming the district court's judgment is affirmed (see App. A) dated September 12, 2003.

The Order and Judgment of the United States District Court for the Eastern District of Michigan, Southern Division (see Appendix C) as dated March 18, 2003

JURISDICTION

The date on which the United States Court of Appeals for the Sixth Circuit decided my case was September 12, 2003. Mandate (see App. B).

A timely petition for rehearing was denied by the United States Court of Appeals for the Sixth Circuit on the 15th day of October, 2003.

The Jurisdiction of this court is involved under 28 U.S.C. § 1254 (1) of 28 U.S.C. § 1.

The statutory provision for this court's jurisdiction is 28 U.S.C. Sections 1331 and 1343 (3).

The statutory provision of the court's jurisdiction is herein incorporated 28 U.S.C. § 519, because of the Qui-tam

civil action brought by Michael Earl Conely in his own name as a Natural born Citizen of the United States and in the name of the de-jure government of the united States. In view of **Director of Revenue of Missouri vs. Co Bank ACB, 531 U.S. 316 (2001); Moe vs. Confederated Salish and Kootenai Tribes, 425 U.S. 463,470 (1976) doctrine of Stare decises.**

The Jurisdiction of this Court is invoked in accordance with Article III § 2 of the Constitution of the United States of America, 1791 as amended. The subject matter jurisdiction of this action are Acts of the congress for the united States and the Laws of the United States as the supreme Law of the Land in accordance with Article IV, § 4, Form of state government and Article VI, § 2, Supreme Law.

STATEMENT OF THE CASE

This cause of action arose with the taking of the Petitioners private property one International HOUGH 4370007U0020102X, TD 25G Hough Dozer because of alleged taxes due the Township of York. This action occurred when Defendants made False Claims the Personal Property Tax was due pursuant to the claim for personal property tax 99-20-012-450, of the personal property described in paragraph 5, for the years 1998, 1999, 2000, 2001, and 2002 by Defendants Plaintiff, petitioned for Declaratory and Injunctive Relief challenging the taxing statute of constitution grounds and named the United States and the name governmental agents as intervenors. The government declined to intervene. The

principle of law pursuant to 31 U.S.C. § 3730 (b) if the Government declines to intervene within 60 days of notice Michael Earl Conely citizen of the United States and Michael Earl Conely owner and operator of Conely Transport d.b.a. has the exclusive right to conduct this action pursuant to 31 U.S.C. §3730 (b) (4), with attorney fees and cost pursuant to 31 U.S.C. § 3730 (d) (1)-(2).

Plaintiff argued that this action is in violation of Petitioner's due-process Right's, Privileges, Immunities, in accordance with Article IV § 2, Clause 1, the Fourth and Fourteenth Amendments. This action of Seizing, Petitioner's private property, and the taking of this private property is in violation of the Treaty of Ghent of 1814, and the Treaty with the Ottawa and Chippewa Nation of 1836 from foreign invasion. Plaintiff argued This Charter Township of York enforcing the "Specific-Policy" of the Jeopardy Tax Assessment "Statute"is in fact ex-post-facto in violation of Article I § 10, clause,1 a violation of Treaty-Law pursuant to the Constitution of the United States of America, 1791, as amended. Plaintiff is entitled to be reimbursed for costs paid associated with obtaining the return of this private-property, seized by CHARTER TOWNSHIP OF YORK, and legal expenses, as well as any damages associated with the unconstitutional activities of the Charter Township of York.

The Defendants being fully advise of this pending civil cause of action of action the Defendants executed a Sherif's

sale and the HOUGH Dozer was sold to the heights bidder without judicial determination of the Defendants right to sell the private property of the Plaintiff.

The Plaintiff argued that as a White settler in the Northwest Territory of the territorial Michigan state, he (Conely) has the same rights as that of the Indians the United States Government, has a Duty and Obligation to protect this "Citizen"of the United States, living in sovereign Michigan state, under the Treaty of Ghent of 1814, and the Treaty with the Ottawa and Chippewa Nation of 1836. **United States of America vs. STATE OF MICHIGAN et., al., 471 Fed. Supp. 192 (1979).** The STATE OF MICHIGAN as a Foreign State has no authority in areas governed by the treaty. U.S.C. Const. Article 1, § 8, Clause 3.

That after motions were filed by counsels the Court Order the case dismissed over the objection timely filed by Plaintiff in the District Court. see Appendix - C -. (see **Appendix - D - for a more definite statement of Statement of Case).**

The petitioner appealed to the United States court of Appeals for the Sixth Circuit and the court affirmed the decision of the district court. The decision of the district court is in Appendix c, the order of the Sixth Circuit is in Appendix A, and the Mandate of the Court in **Appendix B.**

REASONS FOR GRANTING THE PETITION

I. Whether Judge Paul D. Borman is in error when the Report of the Master was adopted see F.R.Civ. Pro. , Rule 53 and Rule 54. Petition alleges an actual conflict between the federal circuits of the Sixth Circuit Court of Appeals of the United States, citing Paul D. Borman not in errorand the decisions of the Supreme Court of the United States? Petitioner says "Yes"

Clearly Rule 53 (a) (d.) speaks for it self the trial judge has the authority Title 28, U.S.C. § 636 (b) (2) may appoint a special master. The Master shall setforth a time and place for the first meeting of the parties or their attorneys to be held within 20 days after the date of the order of reference and shall notify the parties or their attorneys. (e) of Rule 53 The master shall prepare a report upon the matters submitted to the Master by the order of reference and, if required to make finding of fact and conclusion of law, the master shall set them forth in the report.

The Master did not follow Rule 53 (a) (d.) and (e) and therefore is in procedural error and therefore in violation of Michael Earl Conely's Liberty and due-process.

Further trial judge Paul D. Borman is in error in appointing the Master, that is help is needed; his appointment and activities are only for the purpose of assisting the court to get at the facts and arrive at a correct decision. See **Webster Eisenlohr, Inc. vs. Kalodner, 145 F.2d. 316 (1944)**, and may

involve all incidents of nonjury trial. **Yascavage vs. Weinberger, 159 F2d. 38 (1946).** Conely requested a trial by right of jury, common law jury. See Rule 38. See **Salisbury vs. Housing Authority of Newport, 615 F. Supp. 1433 (1985).** However the Master report could be submitted as evidence of the masters could be read to the jury. **Charles A. Wright, Inc. vs. F.D. Rich Co., 354 F2d. 710 (1966).** Clearly the Master is in error of Rule 53.

Conely's Objections of the Master report was filed timely and clearly stated that the Masters report was erroneous. **Arrow Distilleries, Inc. vs. Arrow Distilleries Inc. , 117 F2d. 636 (1941).**

Clearly Rule 54 was violated when Judge Paul D. Borman adopted the finding and Judge Paul D. Borman issued Judgment on the Masters Report and Recommendation see Rule 54. Judgments; Cost, (a) Definition: Form. "Judgment' as used in these rules includes a degree and any order which an appeal lies. A judgment shall not contain a rectal of pleadings, the report of a master, or the record of prior pleadings. Judge Paul D. Borman judgment is in violation of Rule 54. Judge Paul D. Borman is in error. See **Willett vs. Wells, 469 F. Supp. 748 (1977),** Masters (Magistrate's) pretrial determination - - - is order from which appeal may lie of which Michael Earl Conely appealed alleging Paul D. Borman was in error.

A. Adopting the Master Report and

Recommendation violates Rule 53 and 54 of the F.R.Civ. P. and the due-process of Michael Earl Conely of a Judicial determination of the mixed Question of Facts and Conclusion of Law in before an Article III § 2, court of the united States.

Adopting the Masters Report and the Sixth Circuit affirming the District Court Order and Opinion accepting the Magistrate Judge's Report. Petitioner alleges this action is in violation of the principles of law and theory, that an Act of Congress can not be overruled by an Act of Congress **Dickerson vs. United States, No. 99-5525 (2000).** The subject matter of this particular case is that the statutory procedure under State of Michigan statute and enforced by the Tax Injunctive Act of 28 U.S. C. § 1341, see **Dickerson vs. United States**, as an actual conflict with the Civil Right Act, First, Fifth and Fourteen Amendment of the Constitution for the United States and the Right of redress. All of which Acts of Congress were passes before the adoption of the Tax Injunction Act, and of the compact of 1791, the Constitution for the United States of America. 28 U.S.C. § 1343 (a)(3) and (b)(1) and(2) is not at bar of this court review of the Tax-Injunction-Act of 28 U.S.C. § 1341.

The court in **Civil Rights Cases, 109 U.S. 3 (1878)**; It has a deeper and broader scope. It nullifies and makes void all State legislation, and State action of every kind, which impairs the privileges and immunities of citizens of the United States

or which injures them in life, liberty or property without due process of law, see **Ex parte Virginia, 100 U.S. 339 (1880)** protection of Citizens, or which denies to any of them the equal protection of the laws. It not only does this, but, in order that the national will, thus declared, may not be a mere brutum fulmen, the last section of the amendment invests Congress with power to enforce it by appropriate legislation. To enforce what? To enforce the prohibition. To adopt appropriate legislation for correcting the effects of such prohibited State laws and State acts, and thus to render them effectually null, void, and innocuous. This is the legislative power conferred upon Congress, and this is the whole of it. It does not invest Congress with power to legislate upon subjects which are within the domain of State legislation, but to provide modes of relief against State legislation, or State action, of the kind referred to. It does not authorize Congress to create a code of municipal law for the regulation of private rights, but to provide modes of redress against the operation of State laws and the action of State officers executive or judicial when these are subversive of the fundamental rights specified in the amendment. Positive rights and privileges are undoubtedly secured by the Fourteenth Amendment, but they are secured by way of prohibition against State laws and State proceedings affecting those rights and privileges, and by power given to Congress to legislate for the purpose of carrying such prohibition into effect, and such legislation must necessarily be

predicated upon such supposed State laws or State proceedings, and be directed to the correction [**109 U.S. 12**] of their operation and effect. A quite full discussion of this aspect of the amendment may be found in **United States vs. Cruikshank, 92 U.S. 542 (1975); Virginia vs. Rives, 100 U.S. 313 (1980), and Ex parte Virginia, 100 U.S. 339 (1879).**

Further the amendment section 24 of the Judicial Code of August 21, 1937 also known as the Tax Injunction Act of 28 U.S.C. § 1341 Taxes by States is in violation of the Sixty - First Congress. Sess III, Chapter 231 of 1911 of Section 24 of the Fourteenth. Of all suits authorized by law to be brought by any person to redress the deprivation, under color of any law, statute, ordinance, regulation, custom, or usage of any State, of any right, privilege, or immunity, secured by the Constitution of the United States, or of any secured by any law of the United States providing for equal rights of citizens of the United States, or of all persons within the jurisdiction of the United States. The State of Michigan lacks taxing authority under **M.C.L. 205.705 and M.C.L. 211.60** foreign country the State of Michigan to tax Appellant's private property that is not used in commerce. See **Act of 206 of Public Act of 1893.**

In consideration of the Bill of Rights of the Congress of the United: States, Article the third - - - Congress shall make no laws respecting as establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble, and

to petition the Government for a redress of grievances.

The creation of the people of the United States, of the United States of America is considered the federal States of the United States of America of the Original 50 sovereign states of the united States of the North America's. This Pursuant to the original Congress of the United: States, Constitution of the United States, Adoption of Constitution in May, 1785 and of the amended Constitution of the United States of America the United States Government is bound by this signed agreement, also known as a compact of the people of the united States with the Government of the United States, and of the Article in addition to, and Amendments of the Constitution of the United States of America, proposed by Congress, and ratified by the legislatures of the several States, pursuant to the fifth Article of the Original Constitution.

The Tax Injunction Act does not bar federal court adjudication of this case. That Act prohibits federal district courts from "enjoin[ing], suspend[ing] or restrain[ing]" the imposition or collection of any state tax where a plain, speedy, and efficient remedy may be had in the State's courts, 28 U.S.C. § 1341. By its terms, the Act bars anticipatory relief. Recognizing that there is little practical difference between an injunction and anticipatory relief in the form of a declaratory judgment, the Court has held that declaratory relief falls within the Act's compass. **California v. Grace Brethren Church, 457 U.S. 393, 408 (1982).** But a suit to collect a tax is surely not

brought to restrain state action, and therefore does not fit the Act's description of suits barred from federal district court adjudication. The Act was modeled on state and federal provisions prohibiting anticipatory actions by taxpayers to stop the initiation of collection proceedings. See, e.g., 26 U.S.C. § 7421(a). These provisions were not designed to prevent taxpayers from defending government collection suits. Pp. 433-435.

The deprivation of civil rights is a remedy at law pursuant to 42 U.S.C. § 1983 and this action is within the jurisdiction of the United States District Court of for the District of Columbia for recovery of damages when incorporated with the first part of the civil cause of action for Injunctive Relief. In this particular cause of action the decision in **Rosewell v. LaSalle National Bank, 450 U.S. 503 (1981)** is not at bar because of the defenses raised by Michael Earl Conely. **An Act of Congress can not be overruled by an Act of Congress Dickerson vs. United States, No. 99-5525 (2000), Ex-Post-Facto Act of Congress, of section 34 of 28 U.S.C. § 1341.**

II. Michael Earl Conely, and d/b/a/ CONELY TRANSPORT claim of actual injury and procedural due process were supported by Fact and law under the Doctrine of Article III Standing

The court in Cooper vs. Aaron, 358 U.S. 1 (1958).

The constitutional rights of respondents are not to be sacrificed or yielded to the violence and disorder which have followed [358 U.S. 3] upon the actions of the Governor and Legislature, and law and order are not here to be preserved by depriving the Negro children of their constitutional rights, the court in **Cooper vs. Aaron.**

The controlling legal principles are plain. The command of the Fourteenth Amendment is that no "State" shall deny to any person within its jurisdiction the equal protection of the laws.

A State acts by its legislative, its executive, or its judicial authorities. It can act in no [358 U.S. 17] other way. The constitutional provision, therefore, must mean that no agency of the State, or of the officers or agents by whom its powers are exerted, shall deny to any person within its jurisdiction the equal protection of the laws. Whoever, by virtue of public position under a State government, . . . denies or takes away the equal protection of the laws violates the constitutional inhibition; and, as he acts in the name and for the State, and is clothed with the State's power, his act is that of the State. This must be so, or the constitutional prohibition has no meaning.

Ex parte Virginia, 100 U.S. 339, 347. Thus, the prohibitions of the Fourteenth Amendment extend to all action of the State denying equal protection of the laws; whatever the agency of the State taking the action, see **Virginia vs. Rives,**

100 U.S. 313; Pennsylvania vs. Board of Directors of City Trusts of Philadelphia, 353 U.S. 230; Shelley vs. Kraemer, 334 U.S. 1; or whatever the guise in which it is taken, see **Derrington vs. Plummer, 240 F.2d 922; Department of Conservation and Development vs. Tate, 231 F.2d 615**.

Article VI of the Constitution makes the Constitution the **"supreme Law of the Land."** In 1803, Chief Justice Marshall, speaking for a unanimous Court, referring to the Constitution as "the fundamental and paramount law of the nation," declared in the notable case of **Marbury vs. Madison, 1 Cranch 137, 177,(1803)** that "It is emphatically the province and duty of the judicial department to say what the law is." This decision declared the basic principle that the federal judiciary is supreme in the exposition of the law of the Constitution, and that principle has ever since been respected by this Court and the Country as a permanent and indispensable feature of our constitutional system. It follows that the interpretation of the Fourteenth Amendment enunciated by this Court in the Brown case is the supreme law of the land, and **Art. VI of the Constitution** makes it of binding effect on the States "any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." **Every state legislator and executive and judicial officer is solemnly committed by oath taken pursuant to Art. VI, cl. 3 "to support this Constitution."** Chief Justice Taney, speaking for a unanimous Court in 1859, said that this requirement reflected the framers.

The court in **Davidson vs. New Orleans, 96 U.S. 97 (1878);** An assessment of certain real estate in New Orleans for draining the swamps of that City was resisted in the State courts, and by writ of error brought here on the ground that the proceeding deprives the owner of his property without due process of law.

> 1. The origin and history of this provision of the Constitution, as found in Magna Charta and in the Fifth and Fourteenth Amendments to the Constitution of the United States considered.
>
> 2. The Court suggests the difficulty and danger of attempting an authoritative definition of what it is for a State to deprive a person of life, liberty, or property without due process of law within the meaning of the Fourteenth Amendment, and holds that the annunciation of the principles which govern each case as it arises is the better mode of arriving at a sound definition.

The section was the subject of very full and mature consideration in **Slaughter-House Cases, 16 Wall 36 (1872).** In those cases, an act of the Louisiana Legislature, which had granted to a corporation created for the purpose the exclusive right to erect and maintain a building for the slaughter of live animals within the city, was assailed as being in conflict with this section. The right of the State to use a private corporation and confer upon it the necessary powers to carry into effect

sanitary regulations [**96 U.S. 101**] was affirmed, and the decision is applicable to a similar objection in the case now before us. The argument of counsel and the opinion of the Court in those cases were mainly directed to that part of the section which related to the privileges and immunities of citizens; and, as the Court said in the opinion, the argument was not much pressed that the statute deprived the butchers of their property without due process of law. The Court held that the provision was inapplicable to the case.

The prohibition against depriving the citizen or subject of his life, liberty, or property without due process of law is not new in the constitutional history of the English race. It is not new in the constitutional history of this country, and it was not new in the Constitution of the United States when it became a part of the Fourteenth Amendment, in the year 1866.

The equivalent of the phrase "due process of law," according to Lord Coke, is found in the words "law of the land," in the Great Charter, in connection with the writ of habeas corpus, the trial by jury, and other guarantees of the rights of the subject against the oppression of the Crown. In the series of amendments to the Constitution of the United States, proposed and adopted immediately after the organization of the Government, which were dictated by the jealousy of the States as further limitations upon the power of the Federal government, it is found in the fifth, in connection with other guarantees of personal rights of the same character.

Among these are protection against prosecutions for crimes, unless sanctioned by a grand jury; against being twice tried for the same offense; against the accused's being compelled, in a criminal case, to testify against himself; and against taking private property for public use without just compensation.

In Wheeling Steel Corp. vs. Glander, 337 U.S. 562 (1949), the court held; **Both Mr. Justice Woods in Insurance Co. vs. New Orleans, supra, p. 88, and MR. JUSTICE BLACK in his dissent in Connecticut General Co. vs. Johnson, supra, pp. 88-89, have shown how strained a construction it is of the Fourteenth Amendment so to hold. Section 1 of the Amendment provides:**

Michael Earl Conely, Petitioner is not a corporation and the right of working and conduction his private business in Michigan territory is a constitutional guarantee. See Word's "privileges and immunities" in **Federal Constitution Article IV, § 2,** are words of every comprehensive meaning, and the clause in which they are contained plainly and unmistakably secures and protects rights of citizens of one state to pass into any other state of the Unition for purpose of engaging in lawful commerce. Travis vs. Yale & Towne Mfg. Co., 252 U.S. 60 (1920); Privileges and immunities which are, in their nature, fundamental, are these covered by "privileges and immunities" clause of the Federal Constitution. Canadian N.R. Co. vs. Eggen, 252 U.S. 553 (1920). See Hesss vs. Pawloski, 274 U.S. 352 (1927).

III. Whether the Tax Injunction Act bars the United States as Co petitioner from protecting it's instruments, United States currency in the hands of the private Citizen Michael Earl Conely as an investment in the International HOUGH 4370007U0020102X, TD 25G HOUGH Dozer

The court in Director of Revenue of Missouri vs. Co Bank ACB, **531 U.S. 316 (2001) - - -** We have interpreted and applied the **Tax Injunction Act as a "jurisdictional rule" and a "broad jurisdictional barrier."** Moe v. Confederated Salish and Kootenai Tribes of Flathead Reservation, **425 U.S. 463, 470 (1976).** In dismissing **[520 U.S. 826]** an action filed in a United States District Court to challenge state taxes, we held that the Tax Injunction Act **"deprived the District Court of jurisdiction to hear [the] challenges."** California v. Grace Brethren Church, **457 U.S. 393, 396 (1982).** Further, we found no jurisdiction even though the defendant **State argued in favor of the federal court's jurisdiction. Id. at 417, n. 38.** In explaining our holding in Grace Brethren that declaratory relief is as violative of the Tax Injunction Act as an injunction itself, we said the Act was first and foremost a vehicle "`to limit drastically federal district court jurisdiction to interfere with so important a local concern as the collection of taxes.'" **Id. at 408-409 (quoting** Rosewell v. LaSalle National Bank, **450 U.S. 503, 522 (1981)).** These statements underscore

the fundamental importance of the restrictions imposed by the **Tax Injunction Act, restrictions we proceed to address.**

The court - - - The federal balance is well served when the several States define and elaborate their own laws through their own courts and administrative processes and without undue interference from the federal judiciary. The States' interest in the integrity of their own processes is of particular moment respecting questions of state taxation. In our constitutional system, the power of the State to tax is a concurrent power. **That the power of taxation is one of vital importance, that it is retained by the States,** that it is not abridged by the grant of a similar power to the government of the Union, that it is to be concurrently exercised by the two governments are truths which have never been denied. McCulloch v. Maryland, **4 Wheat. 316, 425 (1819). The power to tax is basic to the power of the State to exist.** Wisconsin v. J. C. Penney Co., **311 U.S. 435, 444 (1940); Rosewell, supra, at 522.**

Enactment of the Tax Injunction Act of 1937 reflects a congressional concern to confine federal court intervention **[520 U.S. 827]** in state government, a concern prominent after the Court's ruling in **Ex parte Young, 209 U.S. 123 (1908), that the Eleventh Amendment is not in all cases a bar to federal court interference with individual state officers alleged to have acted in violation of federal law. See Rosewell, supra, at 522, n. 28;** Perez v. Ledesma, **401 U.S.**

82, 104-115 (1971) (Brennan, J., concurring in part and dissenting in part). Given the systemic importance of the federal balance, and given the basic principle that statutory language is to be enforced according to its terms, federal courts must guard against interpretations of the Tax Injunction Act which might defeat its purpose and text.

Where the Government of the United States is a party, of course, the other side of the federal balance must be considered. In our constitutional system the National Government has sovereign interests of its own. The necessity to respect the authority and prerogatives of the National Government underlies the now settled rule that the Tax Injunction Act is not a constraint on federal judicial power when the United States sues to protect itself and its instrumentalities from state taxation. The importance of allowing the United States to proceed in federal court to determine tax immunity questions is no doubt one reason why the exception was established with little discussion in **Department of Employment v. United States, 385 U.S. 355, 358 (1966)**. There, the Court indicated the exception was consistent with a well settled understanding that the Government is not bound by its own legislative restrictions on the exercise of remedial rights unless the intent to bind it is express. **385 U.S. at 358, n. 6 (citing United States v. Livingston, 179 F.Supp. 9, 12 (EDSC 1959) (three-judge District Court, aff'd, 364 U.S. 281 (1960)); United States v.**

Arlington County, 326 F.2d 929, 931 (CA4 1964); United States v. Bureau of Revenue of N.M., 291 F.2d 677, 679 (CA10 1961)). See also Dollar Savings Bank v. United States, 19 Wall. 227, 239 (1874). The Court concluded, in accord with an unbroken line of authority, and [520 U.S. 828] convincing evidence of legislative purpose, that § 1341 does not act as a restriction upon suits by the United States to protect itself and its instrumentalities from unconstitutional state exactions. 385 U.S. at 358 (footnotes omitted). In all the District Court and Court of Appeals cases cited in Department of Employment, the United States was either the sole plaintiff or a co-plaintiff. The United States had joined as co-plaintiff with the Red Cross in Department of Employment, arguing that the Red Cross was a federal instrumentality immune from state taxation, and we held that the Tax Injunction Act did not deprive the District Court of jurisdiction to decide the merits and order relief.

The court again - - -"We have not before now considered whether federal instrumentalities fall under the exception to the Tax Injunction Act when they sue without the United States as co-plaintiff. In Moe v. Confederated Salish and Kootenai Tribes, we reasoned that, when the United States is not a party, the mere fact that a party challenging the tax has interests closely related to those of the Federal Government is not enough, in and of itself, to avoid the bar of the Act. We considered whether the Act barred the exercise of

federal judicial power when Indian tribes were challenging the lawfulness and constitutionality of certain state taxes. Although the tribes did not have formal designations as instrumentalities of the United States, we assumed the interests they asserted were aligned with the **interests of the Federal Government**. Reserving the question of the precise significance of a federal instrumentality designation, the Court said this congruence of interests was not sufficient to give the tribes an exemption from the **Act. 425 U.S. at 471-472.** We went on to find the tribes exempt from the Act only because a second federal statute granted sweeping federal court jurisdiction where an Indian tribe was a party. **Id. at 472 (citing 28 U.S.C. § 1362 (1976 ed.))**. Moe is instructive here. As in Moe, the PCA's say their own mission is defined and **controlled by federal law and that their interests are the [520 U.S. 829] same as those of the United States**. We conclude here, as we did in Moe, that this argument is insufficient to justify an exception to the Tax Injunction Act."

"True, important consequences flow from the congressional decision to designate a PCA formed pursuant to statute as **"an instrumentality of the United States." 12 U.S.C. § 2071(b)(7).** The tax immunity a PCA has under **§ 2077** is a permitted consequence of its status as a federal instrumentality. **An instrumentality of the United States can enjoy the benefits and immunities conferred by explicit statutes, however, without the further inference that the**

instrumentality has all of the rights and privileges of the National Government."

"Respondents (in reference in Co Bank ACB) attempt to counter this point by arguing that NLRB v. Nash-Finch Co., 404 U.S. 138 (1971), is applicable here and supports their cause. Nash-Finch involved not the Tax Injunction Act, but the Anti-Injunction Act, the statute which restricts the authority of federal courts to enjoin proceedings in state courts. 28 U.S.C. § 2283. The Anti-Injunction Act provides:

"A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments. Just as the Tax Injunction Act is inapplicable where the United States is a party, a parallel rule prevails under § 2283. Leiter Minerals, Inc. v. United States, 352 U.S. 220, 225-226 (1957) (The restrictions of § 2283 are inapplicable in a suit brought by the National Government.) The question in Nash-Finch was whether the National Labor Relations Board (NLRB) came within the United States' exception to § 2283." "We held it did. In so ruling, we observed the NLRB's regulatory power "preempts the field." Nash-Finch, 404 U.S. at 144;(1971) see also id. at 147 ("The exclusiveness of the federal domain is clear . . ."). The case does not aid the PCA's, for their powers are far

different from those of the NLRB. As will be discussed in more detail below, the [520 U.S. 830] PCA's more closely resemble the private entities Nash-Finch distinguished from the Federal Government and its agencies. Id. at 146."

"As to the Tax Injunction Act itself, the courts of appeals have adopted different standards over time for deciding whether a federal instrumentality may sue in federal court to enjoin state taxation where the United States is not a co-plaintiff. Under the most restrictive approach, there **is no exception to the Tax Injunction Act for federal instrumentalities unless the United States sues as a co-plaintiff. See, e.g., United States v. State Tax Commission, 481 F.2d 963, 975 (CA1 1973)** ("It is reasonable, as a prerequisite to bypassing normal state tax collection and litigation channels, that [the instrumentalities] persuade the Attorney General of the United States . . . to join in their claim"); **Housing Authority of Seattle v. State of Washington, Dept. of Revenue, 629 F.2d 1307, 1311 (CA9 1980) (agreeing with the First Circuit in State Tax Commission "that such joinder [with the United States as co-plaintiff]** is necessary before a federal instrumentality can overcome the restrictions" of the **Tax Injunction Act**). After its decision in **State Tax Commission**, the Court of Appeals for the First Circuit modified what had seemed to be a brightline rule to produce a different test: "[E]ach instrumentality must be examined in light of its governmental

role and the wishes of Congress as expressed in relevant legislation." **Federal Reserve Bank of Boston v. Commissioner of Corporations and Taxation of Mass., 499 F.2d 60, 64 (1974). Federal Reserve banks, the Court of Appeals noted, are not analogous to private corporations, but rather are "plainly and predominantly fiscal arms of the federal government" with interests "indistinguishable from those of the sovereign." Id. at 62.** "The court also pointed to **a federal statute giving a Federal Reserve bank "unrestricted access to the district courts," id. at 63 (referring to 12 U.S.C. § 632); and to the Federal Reserve System's unusual position "outside the executive chain of [520 U.S. 831] command," 499 F.2d at 463. See also Bank of New England Old Colony v. Clark, 986 F.2d 600, 602-603 (CA1 1993)."**

The court in **Moe v. Confederation Salish and Kootenat Tribes of Flathead Reservation, 425 U.S. 463, 470 (1976)** we (the court) held that the tax Injunction Act " deprived the District Court of jurisdiction. Under the principle of law Petitioner has the authority pursuant Qui-tam civil action to sue in the name of the United States to protect himself and the United States itself or its instrumentalities from state taxation.

The court - - - **Great Lakes Co. v. Huffman, 319 U.S. 293,298 (1943).** This broad jurisdictional barrier, however, has been held by this Court to be inapplicable to suits brought by

the United States "to protect itself and its instrumentalities from unconstitutional state exactions." **Department of Employment v. United States, 385 U.S. 355, 358 (1966). [425 U.S. 471]**

With the purchase of the Northwest Territory by the government of the United States, in this particular action the State of Michigan lost all claims of interest to the public lands that are now know is the sovereign Michigan state, the 26th state of the Union of the Original 48 contiguous States and the District of Columbia as "States" defined pursuant **49 U.S.C.A. § 31701 of the International Fuel Tax Agreement**. The de-facto state of Michigan lacks the taxing authority to tax private property without the showing of an interest in the property. In this particular case of action the TD 25G HOUGH Dozer that is used in private contracts.

Petitioner applies the same principle and concept of the laws as was held in **Arizona Department of Revenue v. Blaze Construction Co.,526 U.S. 32 (1999)** - - - the Arizona Court of Appeals held (and Blaze urges here) that the tax cannot be applied to activities taking place on Indian reservations. After it employed a **[526 U.S. 37]** balancing test "weighing the respective state, federal, and tribal interests," **Cotton Petroleum Corp. v. New Mexico, 490 U.S. 163, 177 (1989)**, the court below held that a congressional intent to preempt Arizona's tax could be inferred from federal laws regulating the welfare of Indians. In cases involving taxation of on-reservation activity, we have undertaken this "particularized

examination," **Ramah Navajo School Bd., Inc. v. Bureau of Revenue of N.M., 458 U.S. 832, 838 (1982)**, where the legal incidence of the tax fell on a nontribal entity engaged in a transaction with tribes or tribal members.

The Defendants-Respondents failed to establish that Michael Earl Conely and Conely Transport conducted and/or is doing business with the defacto State of Michigan and/or the Township of York/ York Township, that being the charging instrument a contract with the States of Michigan and/or the Federal Government that would allow the tax in question.

The Defendants-Respondents lacked the authority to tax this particular TD 25G HOUGH Dozer, pursuant 28 U.S.C. § 1343 the Plaintiff acted as a matter of Right requesting the district court under federal question jurisdiction challenges the taxing authority of the Township of York/ York Township a creation of the State of Michigan.

Further if the Federal Intervenors declined to intervene Michael Conely Should have been allow to amend and correct his civil cause of action and name the de-jure United States as a Coplaintiff pursuant 28 U.S.C. § 2401 the United States as a party.

Wherefore Michael Earl Conely, Appellant and CONELY TRANSPORT, Plaintiffs, request the court take Judicial Notice in this proceeding before the Supreme Court of the United States.

JUDICIAL NOTICE of the PREAMBLE and the CONSTITUTION OF THE UNITED STATES

We the people of the United States, in order to form a more perfect Union, establish justice, insure domestic Tranquility, provide for the common defense, promote the General Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

Supremacy Clause - - - Article VI, Clause 2. Supreme law. This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of Any State to the Contrary notwithstanding. [Reagan vs. United States, 182 U.S. 419 (1901).

The court in - - - **U.S. Term Limits, Inc. v. Thornton 514 U.S. 779 (1995)** - - - The Federalists' responses to those criticisms and proposals addressed the merits of the issue, arguing that rotation was incompatible with the people's right to choose. As we noted above, **Robert Livingston argued**: **[514 U.S. 814]** " The people are the best judges who ought to

represent them. To dictate and control them, to tell them whom they shall not elect, is to abridge their natural rights. This rotation is an absurd species of ostracism.

CONCLUSION

For the reasons set forth above, Judge Paul D. Borman is in error First) accepting the Recommendations of the Magistrate JUDGE Donald A. Scheer in violation of Rule 53 and 54;Second) Dismissing of False Claims act requesting the United States Intervene in this action as Co-plaintiff; Third) deciding the question of law as a judicial district court of the United States. Whether the Tax Injuction Act violates the Rights privileges of Michael Earl Conely of Right of **Redress and Declaration Relief from the Tax Injunction Act, as a class of one** under the protection and equal protection of the 14th Amendment of the Constitution of the United States; Fourth) judge Paul D. Borman error in the fact that when the United States of America declined to intervene, Michael Earl Conely has the **right to name the United States as Coplaintff** in this civil action in the recovery of instruments of the United States. That being that of the Uhited States currency used in the payment of the seized property as identified as one International HOUGH 4370007U002012X painted yellow TD 25G HOUGH with 12'blade, pursuant **York township Zoning "Ordinance" 44.02, class 251 pursuant State of Michigan, and the Act 206 of public Act of 1893**. In the civil cause of action filed in the U.S. District Court Michael Earl Conely

alleges unlawful acts and the taking of private property in violation of the 14th Amendment of the Constitution of the United States.

Whereas, when in fact, "that being the case" the United States District Court for the Eastern District of Michigan, Southern Division is in error and the orders of the United States Court of Appeals for the Sixth Circuit are in actual conflict with the federal circuit courts and the decisions of the Supreme Court of the United States, that being **Stare decisis**, principle of law and remedy when points of law has been settled by decision of this Supreme Court of the United States. That being the reason your petitioner and Co petitioner the sovereign United States brings this Writ of Certiorari is before this court this honorable court and the honorable justices of the court of the United States. Petitioner, Michael Earl Conely, and Co Petitioner the United States in this civil cause of action request this Supreme Court of the United States grant this Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit granting summarily reverse of the opinion and Order of Paul D. Borman JUDGE of the United States District Court for the Eastern District of Michigan, Southern judicial Division.

Wherefore, Petitioner(s), comes now before this court pursuant 28 U.S.C. § 1254 (1)(2) a herein incorporates the jurisdiction of this court pursuant 28 U.S.C. § 519 the United States as a party of this action under the principle of law Qui-

tam civil action as Co-petitioners as real parties of interest sues to protect itself and its instrumentalities in the hands of a private Citizen Michael Earl Conely sovereign Citizen of the United States from state taxation. **[Department of Employment v. United States, 385 U.S. 355, 358 (1966)].**

Michael Earl Conely, as a pro-se litigant be held to less stringent pleading standards than bar [licensed] attorneys. Regardless of the deficiencies in their pleadings, pro se litigants are entitled to the opportunity to submit evidence in support of their claims. **Star decisis, doctrine** the principles of law apply to all future case. See ***Anastasoff v. United States,* 223 F.3d 898 (8th Cir. 2000).**

Wherefore, Michael Earl Conely, request this Supreme Court of the United States grant this Writ of Certiorari in his own name as an American Citizen of the United States.

Dated: 3-18-04 Michael E. Conely

Michael Earl Conely
c/o 8201 Allen Road
Fenton, Michigan state,
in the united States[48430]
1- (810) 229-6107
Petitioner propia persona

Subscribed to and sworn before me this 18 day of, March 2004.

Notary Public Livingston County, Michigan.
My Commission Expired

ANNETTE MARIE-FARMER
Notary Public Livingston County, Mich.
My Commission Expires 11-12-2006

APPENDIX - A -
affirming judgment of the district court

No: 03-1533
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Filed: October 23, 2003

MICHAEL EARL CONELY;)

Plaintiff - Appellant)

CONELY TRANSPORT)

Plaintiff)

v.)

TOWNSHIP OF YORK; PATRICK WANTY; JOHN HARGROVE; MICHAEL J. CROSSEY; SALLY B. DONAHUE; STATE OF MICHIGAN; JOHN ENGLER, Governor of the State of Michigan; JENNIFER GRANHOLM; UNITED STATES OF)

AMERICA; U.S. ATTORNEY FOR THE EASTERN DISTRICT OF MICHIGAN; ATTORNEY GENERAL OF THE UNITED STATES; JOHN ASHCROFT, United States Attorney General)

Defendants - Appellees)

Before: SUHRHENIRICH, COLE, and RODGERS, Circuit Judges.

Michael Earl Conely, a pro se Michigan resident, appeals the district court's order and judgment dismissing his civil action against the Township of York ("Township"), the State of Michigan ("State"), and a number of officials of those bodies, brought under 42 U.S.C. § 1893 and the False Claims Act, 31 U.S.C. § 3729. This case has been referred to a panel of the court pursuant to Rile 34(j)(1), Rules of the Sixth Circuit. Upon examination, this panel unanimously agree that oral argument is not needed. Fed. R. All. P. 34 (a).

Seeking monetary, declaratory, and injunctive relief, Conely sued the Township along with its chairperson (Wanty), secretary (Hargrove), vice chairperson (Crossey), and treasurer (Donahue); and the State along with its governor (Engler) and attorney general (Granholm); the officials were also sued in their individual capacities. In addition, Conely named the United States, the Department of Justice (DOJ), the United States Attorney for the Eastern District of Michigan, and the United States Attorney General (Ashcroft) as additional plaintiffs and intervenors in his asserted *qui tam* action under the False Claims Act.

This case arises out of Conely's dispute with the Township over personal property taxes for the years 1998 through 2002, which Conely neglected to pay. As a result, and after assessments, notices, and the opportunity to be heard, the Township seized two bulldozers owned by Conely, doing business as Conely Transport, and sold them at auction to pay

the taxes due. Conely, however, claims that the State and Township had no authority to impose a personal property tax on him. He further asserts that the seizures violated his rights under the Due Process and Privileges and Immunities Clauses, the federal False Claims Act, the Treaty of Ghent of 1814, and the 1836 Treaty with the Ottawa and Chippewa Nations. Finally, he claims that Township Ordinance 44.00 *et seq.* (a zoning ordinance) is constitutionally vague and overbroad and violates his fundamental right to privacy and to control his private property.

The State defendants filed a motion to dismiss under Fed. R. Civ. P. 12(b)(l), for lack of subject matter jurisdiction. The Township defendants filed a motion for summary judgment under Fed. R. Civ. P. 56. The Federal defendants filed a notice of election to decline intervention and a motion for the dismissal of the false claims action. Conely opposed these motions.

In a report filed on March 18, 2003, the magistrate

judge recommended that the motions to dismiss by the State and Township should be granted, that the motion for dismissal of the false claims action should be granted, and that the action should be dismissed with prejudice. The magistrate judge found that the federal court lacked jurisdiction to determine the constitutional and federal statutory claims raised in Conely's complaint. The district court overruled Conely's objections and dismissed the complaint in an order and separate judgment filed on March 31 and entered on April 1, 2003.

On appeal, Conely continues to argue the merits of his claims and maintains that the district court erred in finding that it lacked jurisdiction to determine them.

Upon review, we affirm the district court's judgment for the reasons stated in the magistrate judge's report. This court reviews *de novo* a district court's judgment dismissing a complaint for lack of subject matter jurisdiction under Rule

12(b)(l). *Hedgepeth v. Tennessee,* 215F.3d 608, 611 (6th Cir. 2000). "When the defendant challenges subject matter jurisdiction through a motion to dismiss, the plaintiff bears the burden of establishing jurisdiction." *Id.*

A district court's grant of summary judgment under Rule 56 is also reviewed *de novo. Thompson v. Ashe,* 250 F.3d 399, 405 (6th Cir. 2001). Summary judgment is proper only where there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. *Id.* "[T]he party opposing the motion may not rely solely on the pleadings and must adduce more than a mere scintilla of evidence; if the nonmoving party fails to make a sufficient showing on an essential element of the case with respect to which the nonmovant has the burden, the moving party is entitled to summary judgment as a matter of law." *Id.*

Conely has not met his burden to show that this court lacks jurisdiction over his complaint. Pursuant to the Tax Injunction Act, 28 U.S.C. § 1341, a federal court "shall not

enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such state." The Act also prohibits courts from issuing declaratory judgments holding state tax laws unconstitutional. *See Thiokol Corp. v. Roberts,* 76 F.3d 751, 761 (6th Cir. 1996). It is clear that this case consists of a dispute over the nonpayment of personal property taxes. Michigan provides a "plain, speedy and efficient remedy" for tax disputes; the fact that Conely did not avail himself of his statutory remedies does not render them inadequate for purposes of the Tax Injunction Act. Thus, the federal courts are without jurisdiction to grant the relief requested by Conely. *See Rosewell v. LaSalle Nat'l Bank,* 450 U.S. 503, 522 (1981).

Nor did the district court err in dismissing the federal "intervenors" and the False Claims Act (FCA) claim. Conely's

complaint fails to allege any fact giving rise to a claim under the Act, which requires a showing of false or fraudulent action against *the federal government. See* 31 U.S.C § 3729. "The FCA is not designed to serve the parochial interests of relators, but to vindicate civic interests in avoiding fraud against public monies." *United States v. Health Possibilities, P.S.C.*, 207 F.3d 335, 340 (6th Cir. 2000).

Finally, we note that neither the zoning code ordinance nor the treaties cited by Conely have anything whatsoever to do with Conely's complaint.

Accordingly, the district court's judgment, entered on April 1, 2003, is affirmed. Rule 34(j)(2)(C), Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT

_____

Clerk

APPENDIX - B -
MANDATE

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No: 03-1533

Filed: October 23, 2003

MICHAEL EARL CONELY;

Plaintiff - Appellant

CONELY TRANSPORT

Plaintiff

v.

TOWNSHIP OF YORK; PATRICK WANTY; JOHN HARGROVE; MICHAEL J. CROSSEY; SALLY B. DONAHUE; STATE OF MICHIGAN; JOHN ENGLER, Governor of the State of Michigan; JENNIFER GRANHOLM; UNITED

STATES OF AMERICA; U.S. ATTORNEY FOR THE EASTERN DISTRICT OF
MICHIGAN; ATTORNEY GENERAL OF THE UNITED STATES; JOHN ASHCROFT,
United States Attorney General

Defendants - Appellees

MANDATE

Pursuant to the court's disposition that was filed 9/12/03

the mandate for this case hereby issues today.

Attest:

A True Copy.

COSTS: **NONE**

Filing Fee .....$

Printing .....$

Total .....$

_____
Deputy Clerk

APPENDIX - C -

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MICHAEL EARL CONELY,

Plaintiff, Case Number: 02-74252

v. JUDGE PAUL D. BORMAN
UNITED STATES
DISTRICT COURT

CHARTER TOWNSHIP OF YORK, et al.,

Defendants.

OPINION AND ORDER ACCEPTING THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION (1) GRANTING THE TOWNSHIP DEFENDANTS' MOTION TO DISMISS; (2) GRANTING THE STATE DEFENDANTS' MOTION TO DISMISS; (3)

GRANTING THE FEDERAL DEFENDANTS' MOTION TO DISMISS; (4) DENYING PLAINTIFF'S MOTION ... TO LIMIT DEFENDANTS EFFECT OF APPEARANCE; AND (5) DISMISSING THIS ACTION WITH PREJUDICE

The Court has reviewed the Magistrate Judge's Report and Recommendation filed on March 18, 2003, as well as the Plaintiff's objections filed on March 27, 2003.

IT IS ORDERED that the Report and Recommendation is accepted and entered as the findings and conclusions of this Court.

SO ORDERED.

PAUL D. BORMAN
UNITED STATES
DISTRICT JUDGE

Dated: MAR 31 2003
Detroit, Michigan

APPENDIX - C -
JUDGMENT

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MICHAEL EARL CONELY,

Plaintiff, Case Number: 02-74252

v. JUDGE PAUL D. BORMAN
UNITED STATES
DISTRICT COURT

CHARTER TOWNSHIP OF YORK, et al.,

Defendants.

JUDGMENT

On this date, the Court accepted the Report and Recommendation of Magistrate Judge Donald A. Scheer.

Therefore, a judgment shall be entered in favor of the

Defendants, Charter Township of York, et al., and against the Plaintiff, Michael Earl Conely.

DATED: 3/31/03

DAVID J. WEAVER
CLERK OF COURT

JONIE PARKER
DEPUTY CLERK

cc: Michael Conely, Ellen Christenson, Roland Hwang, Frederick Lucas

ADDENDUM - A -

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MICHAEL EARL CONELY,

Plaintiff,

v.

CHARTER TOWNSHIP OF YORK, et al.,

Defendants.

CIVIL ACTION
NO. 02-74252

DISTRICT JUDGE
PAUL D. BORMAN

MAGISTRATE

JUDGE DONALD
A. SCHEER

REPORT AND RECOMMENDATION

I. RECOMMENDATION:

I recommend that the Motions to Dismiss Filed by the Township Defendants and the State Defendants be granted.

further recommend that the Federal Defendants' Motion for Dismissal of False Claims Action be granted. Finally, I recommend that Plaintiff's Motion ... to Limit Defendants Effect of Appearance be denied, and that this action be dismissed with prejudice.

II. REPORT:

A. Procedural History

This lawsuit was filed on October 28, 2002. It arises from the seizure and sale by officials of York Charter Township, of certain personal property owned by plaintiff[1] and formerly located within the Township. The seizure and sale were conducted pursuant to Michigan statutes and resulted from plaintiff's failure to pay personal property taxes assessed against the seized items during tax years 1998 through 2001. Plaintiff did not

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[1] Plaintiff, Michael Earl Conely, filed this action in his individual capacity and as proprietor of Conely Transport pursue me statutory procedures established under state law for contesting the assessments. The personal property, consisting of two bulldozers, was sold at public auction on December 13, 2002.

Plaintiff seeks declaratory and injunctive relief as well as money damages. He has named as defendants the following:

the United States of America, the U.S. Department of Justice, the U.S. Attorney General and the United States Attorney for the Eastern District of Michigan (hereinafter collectively referred to as Federal Defendants); the State of Michigan, the Governor of Michigan, and the Attorney General of Michigan (hereinafter collectively referred to as State Defendants); the Charter Township of York, the Township Treasurer and three present/former members of the Township Planning Commission (hereinafter collectively referred to as Township Defendants).

Plaintiffs pro se Complaint is verbose, formalistic and virtually incomprehensible. It contains copious, but generally inapposite, passages from court decisions and legal commentaries, liberally seasoned with whole or fragmentary Latin phrases. Plaintiff brings this action under the federal Civil Rights Act, 42 U.S.C. §1983, the federal False Claims Act, 31 U.S.C. §3729, and Declaratory Judgment Act, 28 U.S.C. §2201. He challenges the constitutionality of the tax laws and procedures which resulted in the seizure and sale of his personal property. He maintains that the action of the township defendants constituted the taking of private property without due process, in violation of the Fifth Amendment to the United States Constitution. He asserts that the tax ordinance is overbroad, vague and beyond the authority of the Charter

Township of York and the State of Michigan. He further claims that the seizure of his private property was a "violation of Amendment First right of redress and judicial review of the foreign judgment of the Charter Township of York State, in violation of the due process clause that private property shall not be taken pursuant to Amendment Fourteen, sections one and five of the United States Constitution." (Complaint, page 5 of 40). He makes additional and collateral claims, among which is the assertion that the Township and State Defendants took action in violation of the Treaty of Ghent of 1814, and the Treaty with the Ottawa and Chippewa Nation of 1836. He maintains that those treaties obligate the United States Attorney and the United States Department of Justice to protect him against invasive actions. (Complaint, pages 6-7). Plaintiff seeks declaratory and injunctive relief, including a finding that Ordinance 44.02[2] for York Charter Township is unconstitutional; and that the actions of the State and Township defendants violated both the Constitution and the Treaties upon which plaintiff relies. He also seeks money damages, costs and legal expenses. (Complaint, page 7).

To the best of my ability to discern them, plaintiff's claims against the Federal Defendants are: 1) that the Township's tax collection activities violated the United States Constitution and the federal False Claims Act; 2) that the

Township violated (federal) Fair Debt Collection practices; and 3) that the United States government has a duty to protect plaintiff from the Township's tax collection activities under the Treaty of Ghent and the 1836 Treaty with the Ottawa and Chippewa Nation.

The State Defendants have filed a Motion to Dismiss, in which the Township Defendants have joined. The Township Defendants have filed a Motion to Dismiss, in which the State Defendants have joined. The Federal Defendants have filed a Notice

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[2] The relevance of this ordinance, which deals with zoning within York Township, is not apparent. Declining Intervention Under the False Claims Act, together with a Motion to Dismiss all claims by the plaintiff under that statute.

B. Standard of Review

Federal Rule of Civil Procedure 12(b)(6) provides that a Complaint must be dismissed if it fails to state a claim upon which relief may be granted. In assessing a Motion to Dismiss, the Court "must construe the Complaint in the light most favorable to the plaintiff, accept all factual allegations as true, and determine whether the plaintiff undoubtedly can prove

no set of facts in support of his claims that would entitle him to relief." Allard v. Weitzman, (In Re: DeLorean Motor Company), 991 F.2d 1236, 1239-40 (6th Cir. 1993) (citing Meador v. Cabinet for Human Resources, 902 F.2d 474,475 (6th Cir.), cert. denied, 498 U.S. 867 (1990)); see also, Conely v. Gibson, 355 U.S. 41 (1957). "A Complaint need not set down in detail all the particulars of a plaintiff's claim, but must simply give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." Lillard v. Shelby County Board of Education, 76 F.3d 716, 726 (6th Cir. 1996) (citation omitted).

Although the standard is liberal, it requires more than the bare assertion of legal conclusions. In Re: DeLorean Motor Company, 991 F.2d at 1240; Scheid v. Fanny Farmer Candy Shops. Inc., 859 F.2d 434,436 (6th Cir. 1998). The Complaint must "contain either direct or inferential allegations respecting all the material elements necessary to sustain a recovery under some viable legal theory." Scheid, 859 F.2d at 436 (quoting Car Carriers,

Inc. v. Ford Motor Company, 745 F.2d 1101, 1136 (7th Cir. 1984). cert. denied, 470 U.S. 1054 (1985)). In the content of a civil rights action, "conclusory allegations of unconstitutional conduct without specific factual allegations failed to state a claim under Section 1983. Lillard, 76 F.3d at 726. A factual

basis for the claim must be set forth in the pleadings. Id.

Rule 56(c) of the Federal Rules of Civil Procedure provides that a motion for summary Judgment will be granted when the moving party establishes that there is no genuine issue of material fact for trial and that he is entitled to judgment as a matter of law. Celotex v. Catrett, 477 U.S. 317, 323 (1986). The Court must consider all pleadings, affidavits, and admissions on file and draw all justifiable inferences in favor of the party opposing the motion. Smith v. Hudson, 600 F.2d 60, 64 (6th Cir.), cert. dismissed, 444 U.S. 986 (1989). The moving party has the burden of showing the Court that no genuine issues of material fact remain. Agristor Financial Corp. v. Van Sickel, 967 F.2d 233, 236 (6th Cir, 1992). However, Rule 56(e) states that the non-moving party has the burden of setting forth "specific facts showing that there is a genuine issue for trial," or else a judgment for the moving party will be entered.

Moreover, dismissals of complaints brought under Civil Rights statutes are scrutinized with special attention. Brooks v. State, 779 F.2d 1177, 1180 (6th Cir. 1985). A cross petitioner's complaint will be held to a less stringent standard than one drafted by an attorney. Hanes v. Curner, 404 U.S. 519, 520 (1972). Nevertheless, the Court will not engage in a guessing game in order to determine the nature of the claims asserted by

a

pro se litigant. Wells v. Brown, 891 F.2d 591, 594 (6th Cir. 1989).

C. Analysis

Because I find that this Court lacks jurisdiction to determine the constitutional and federal statutory claims raised in the Complaint, I recommend that the Motions to Dismiss Filed by the Township and State defendants be granted. For the same reason, and because I find that plaintiff has failed to state a claim against the Federal Defendants, I recommend that their Motion to Dismiss be granted.

1.

Township and State Defendants

Separate Motions to Dismiss were filed by the Township Defendants and the State Defendants. Each group subsequently joined the motion filed by the other. Both the Township and State Defendants assert that this Court lacks jurisdiction over plaintiff's Complaint pursuant to the terms of the Tax Injunction Act, 28 U.S.C. §1341. For the reasons set out below, I concur with the defendants' jurisdictional argument.

"The District Court's shall not enjoin, suspend or

restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the Court's of such State." 28 U.S.C. §1341. Plaintiff's Complaint expressly declares that this is an action for declaratory as well as injunctive relief. In Rosewell v. LaSalle National Bank, 450 U.S. 503 (1980), the Supreme Court recognized that compelling reasons exist for the act's plainly stated prohibition against federal court interference with the taxation systems of the states.

> If federal injunctive relief were available, 'state tax administration might be thrown into disarray, and taxpayers might escape the ordinary procedural requirements imposed by state law. During the pendency of the federal suit the collection of revenue under the challenged law might be obstructed, with consequent damage to the State's budget, and perhaps a shift to the State of the risk of taxpayer insolvency. Moreover, federal constitutional issues are likely to turn on questions of state tax law, which, like issues of state regulatory law, are more property heard in the state courts.'

450 U.S. at 527 (citing Perez v. Ledsma, 401 U.S. 82, 128, n.17 (1971) (Brennan, J. concurring in part and dissenting in part)).The Court observed that the Tax Injunction Act has its roots in equity practice principles of federalism, and the recognition of the imperative needs of the states to administer their own fiscal operations. Justice Brennan's majority opinion emphasized that the statute expressly makes the limitation of federal court jurisdiction contingent upon the existence of a "plain, speedy and efficient remedy." The court concluded that the Tax Injunction Act embodied Congress' decision to transfer jurisdiction over a class of substantive federal claims from federal district courts to state courts, and noted that final review of the substantive federal claims could thereafter be obtained in the Supreme Court. 450 U.S. at 514-15.

While the Rosewell case dealt specifically with claims for injunctive relief, the Court held in California v. Grace Brotheran Church, et al., 457 U.S. 393 (1982) that the Congressional intent to prevent federal court interference with the assessment and collection of state taxes extended as well to claims for declaratory relief.

Subsequent Circuit court decisions extend the same rationale to cases seeking money damages. See, A Bonding Company v. Sunnuck, 629 F.2d 1127 (5th Cir. 1980) (Tax

Injunction Act deprived district court of jurisdiction over claim for money damages based on alleged unconstitutionality of local tax and allegedly tortious nature of attempted enforcement). Thus, it is clear that this court is without jurisdiction to adjudicate plaintiff's
claims in this case if the laws of the State of Michigan provided him "a plain, speedy and efficient remedy" as contemplated in the Tax Injunction Act. I am satisfied that such a remedy was afforded to this plaintiff.

Pursuant to the taxing authority provided by Article IX, Section 3 of the Michigan Constitution, the State Legislature enacted the Michigan General Tax Act. MCL. 211.1 et seq. MCL 211.8 permits municipalities to levy a tax on personal property within their jurisdiction. Property owners are afforded a statutory right to challenge the assessment of their property before the Township board of review. MCL 211.30. The exhibits in support of the Township defendants' brief indicate that plaintiff received notice of his assessments, but failed to challenge them or to pay the tax due. In compliance with statutory notice procedures, MCL 211.47, plaintiff was advised in writing on numerous occasions that his failure to pay the tax due could result in legal action or the seizure of property. Written and posted notices were provided to him on April 18, and 19, 2001. Plaintiff's property was ultimately sold at public

auction on December 13, 2002.

As observed by the State Defendants in the brief in support of their motion to dismiss, Michigan law provides taxpayers with the opportunity to challenge any personal property assessment. MCL 211.29 and 211.30. If a taxpayer is dissatisfied with the relief afforded by a Township Board of Review, he has recourse to the Michigan Tax Tribunal. MCL 205.735. In any event, the decisions of administrative authorities can be appealed to the Michigan Court of Appeals and Michigan Supreme Court, with ultimate recourse to the United States Supreme Court if federal issues are implicated. The remedy is "plain, speedy and efficient" when a taxpayer has the opportunity to pay the disputed tax and seek a refund. Rosewell, 450 U.S. at 517; California v. Grace Brotheran Church, 457 U.S. 393, 417 (1982), or has the opportunity to assert a defensive argument against the assessment or collection of a State tax in a judicial proceeding. Ashton v. Cory, 780 F.2d 816, 819-20 (9th Cir. 1986). That the tax must be paid and a refund sought, even without interest, does not mean that a State remedy is not plain, speedy and efficient. Rosewell, 450 U.S. at 524-526. It is abundantly clear that plaintiff in this case was afforded a remedy meeting the requirements of the Tax Injunction Act. He simply neglected to pursue the opportunities provided to challenge his tax obligations. Failure to timely invoke a plain, speedy and efficient remedy does not make that remedy inadequate. Aluminum Company of America v. Michigan Department of Treasury, supra. See also,

Kistner v. Milliken, 432 F.Supp. 1001, 1007(E.D.MI 1977).

The fact that plaintiff pursues this case under the rubric of a "civil rights" action or a claim under the Declaratory Judgment Act will not serve to confer jurisdiction on this Court where a plain, speedy and efficient remedy was afforded under State law. "The Federal Courts will not entertain actions for relief from State or local taxes unless federal rights are protected in no other way. Lynch v. Household Finance Corporation, 405 U.S. 538, 542 n.6 (1972); King v. Sloane, 545 F,2d 7, 8 (6th Cir. 1976).

Both the Township Defendants and the State Defendants sought dismissal on other grounds. Although I am persuaded that they would have been entitled to dismissal on the majority of their secondary arguments, it is unnecessary to address them in the absence of jurisdiction over plaintiff's Complaint. Accordingly, I recommend that the joint Motions to Dismiss filed by the Township and State defendants be granted, and that plaintiff's Complaint against both groups be dismissed with prejudice.

2. Federal Defendants

I am fully satisfied that plaintiff has stated no viable cause of action against any of the Federal Defendants. Despite his efforts to transmogrify this lawsuit into a federal civil rights or false claims action, it remains in its very essence a challenge to the tax system of the State of Michigan. As such, it is withdrawn by the Tax Injunction Act from the jurisdiction of this Court, and the Complaint should be dismissed. Even if

jurisdiction did exist, plaintiff has alleged no fact giving rise to a claim under the False Claims Act. 31 U.S.C. §3729 establishes civil liability on the part of any person who:

> 1) knowingly presents, or causes to be presented, to an officer or employee of the United States Government or a member of the armed forces of the United States a false or fraudulent claim for payment or approval;
>
> (2) knowingly makes, uses, or causes to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the Government;
>
> (3) conspires to defraud the Government by getting a false or fraudulent claim allowed or paid;
>
> (4) has possession, custody or control of property or money used, or to be used, by the Government and, intending to defraud the Government or willfully to conceal the property, deliveries, or causes to be delivered, less property than the amount for which the person receives a certificate or receipt;
>
> (5) authorized to make or deliver a document certifying

> receipt of property used, or to be used, by the Government and, intending to defraud the Government, makes or delivers the receipt without completely knowing that the information on the receipt is true;
>
> (6) knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the Government, or a member of the Armed Services, who lawfully may not sell or pledge the properly; or
>
> (7) knowingly makes, uses, or causes to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Government,....

Plaintiff's Complaint fails to assert facts constituting any of the statutory bases for liability. The objective of Congress in enacting the False Claims Act was broadly to protect the funds and property of the Government from fraudulent claims, regardless of the particular form or function of the Government instrumentality upon which the claims were made. Rainwater v. U.S., 356 U.S. 590 (1956). 31 U.S.C. §3730 provides that the Government has primary responsibility

for prosecuting actions based upon false claims, but permits private persons to institute proceedings in the name of the Government under certain conditions. The purpose of these qui tam provisions of the False Claims Act is to promote private citizen involvement in exposing fraud against the Government by providing authority and financial incentives for private parties to expose and prosecute such claims. See, Robertson v. BellHelicopterTextron. Inc., 32 F.3d 948 (5th Cir.), cert. denied, 513 U.S. 1154 (1994); U.S. v. Burmah Oil Company, Ltd., 558 F.2d 43 (2nd Cir.), cert. denied, 434 U.S. 967 (1977). An essential requirement for any action under the False Claims Act, however, is some sort of false claim against the Federal Government. None is alleged in this case.

In his brief opposing the federal defendants' Motion to Dismiss, plaintiff states that "[t]he principle and theory of law is that as a citizen of the United States, Michael Earl Conely acts under the principle that he is the officer of the Government of the people of the United States in his proper personam capacity." That proposition is sufficiently absurd to require no extended analysis. While the concept of "private attorneys general" is not unknown to American jurisprudence, there is no general authority for private citizens to assert claims on behalf of the government.

Mr. Conely's Complaint alleges no offensive action by

any Federal Defendant. His allegations fail to establish the involvement of the Federal Defendants in any of the circumstances giving rise to this lawsuit (i.e. the seizure of plaintiffs property). Private citizens do not have unlimited authority to file actions on behalf of the United States Government. The specific and limited qui tam authority granted by the False Claims Act is inapplicable under the facts alleged in the Complaint. Similarly, plaintiff fails to identify any provision of the Treat of Ghent or the 1836 Treat between the United States and the Ottawa and Chippewa Nation that would render the Federal Defendants proper parties to this action. Accordingly, I recommend that the Government Defendants' Motion for Dismissal of False Claims Action be in all respects granted, and that the plaintiff's Complaint be dismissed with prejudice.

Plaintiff filed a Motion ... to Limit Defendants Effect of Appearance in this Quasi-in- Rem Action. Because this court lacks jurisdiction in this challenge to state law taxing authority, I recommend that the motion be denied.

III. NOTICE TO PARTIES REGARDING OBJECTIONS:

The parties to this action may object to and seek review of this Report and Recommendation, but are required to act within ten (10) days of service of a copy hereof as provided for

in 28 U.S.C. Section 636(b)(1) and E.D. Mich. LR 72.1 (d)(2). Failure to file specific objections constitutes a waiver of any further right of appeal. United States v. Walters, 638 F.2d 947 (6th Cir. 1981), Thomas v. Am, 474 U.S. 140 (1985), Howard v. Secretary of HHS, 932 F.2d 505 (6th Cir. 1991). Filing of objections that raise some issues but fail to raise others with specificity, will not preserve all the objections a party might have to this Report and Recommendation. Smith v. Detroit Federation of Teachers Local 231, 829 F.2d 1370, 1373 (6th Cir. 1987), Willis v. Secretary of HHS, 931 F.2d 390, 401 (6th Cir. 1991). Pursuant to E.D. Mich. LR 72.1(d)(2), a copy of any objections is to be served upon this Magistrate Judge. Within ten (10) days of service of any objecting party's timely filed objections, the opposing party may file a response. The response shall not be more than five (5) pages in length unless by motion and order such page limit is extended by the Court. The response shall address specifically, and in the same order raised, each issue contained within the objections.

Donald C. Scheer

DONALD A. SCHEER

UNITED STATES MAGISTRATE JUDGE

DATED: [signed] March 18, 2003

APPENDIX - D-
MORE DEFINITE STATEMENT OF THE CASE

Statement of Issues Presented

This is a proceeding for Declaratory relief Challenging Constitutionally of York Township Zoning "Ordinance" 44.02, class 251, a creation of the State of Michigan, and Act 206 of the Public Act of 1893 the taking of private property of Michael Conely in the united States; Jury-Demand by the right of trial by the jury under F.R.Civ.P. 38 (a)(b) pursuant to 28 U.S.C. § 2201 and Further relief pursuant to 28 U.S.C. § 2202, as well as Injunctive relief pursuant to 28 U.S.C. § 1983 with other relief that this court of the United States may grant pursuant to the False Claims Act, are persons subject to and liable pursuant to common law qui tam action Fraud Civil Remedies Act of 1986 (PFCRA). **(N.R. -1-)**.

This action arises under 42 U.S.C. § 1983 challenging the Constitutionality of York Township "Ordinance" 44.02 Criminal cause of action "Assessment of Real property" pursuant to Act 206 of the Public Act of 1893 and the taking of private property without due process in violation of Amendment fourteen section 5 of the United States Constitution.

Jurisdiction is proper under 28 U.S.C.§ 1331 and § 1343, federal question being presented in this section under

Amendment First, Fourteen and sections one and five, Article IV, § 2. Clause 1, Privileges and Immunities pursuant to the Constitution for the United States and 42 U.S.C. § 1983.

Venue in proper in accordance with 28 U.S.C. § 1391 (b)(1) and (2), this being a judicial district pursuant to 28 U.S.C. § 102, of Michigan where defendants "reside and/or are doing business" and where a substantial part of the events or omissions giving rise to the claims occurred will occur.

This Complaint challenges this action taken by the Charter Township of York a creation of the State of Michigan, in the United States and the individual citizens of the individual State PATRICK WANTY a.k.a. Patrick Wanty personally, JOHN HARGROVE a.k.a. John Hargrove personally, and individually, MICHAEL J. CROSSEY a.k.a. Michael J. Crossey personally, and individually, SALLY B. DONAHUE a.k.a. Sally B. Donahue, personally and individually, Treasure, of targeting Michael Earl Conely, owner and operator of CONELY TRANSPORT, d.b.a. and his private property that is parked at c/o 9473 Warner, Saline, Michigan. The Charter Township of York PATRICK WANTY a.k.a. Patrick Wanty personally, JOHN HARGROVE a.k.a. John Hargrove personally, MICHAEL J CROSSEY filed Property Assessment on private property of Michael Earl Conely and Seized this particular private property without a hearing and without personal service, described as follows; one FATALLIS FD O3B, 3014 DOZER W/5' x 12.5' BLADE, CARLISLE EQUIPMENT COMPANY, YELLOW CATERPILLAR 637, #71, SN 79P1061, MICHIGAN TRACTOR & MACHINE

COMPANY, and the taking of one International HOUGH 4370007U002012X DOZER painted yellow TD 25D HOUGH with 12'blade. See SEIZURE OF PROPERTY Notice dated: April 18,2001, without a Dow Hearing and without judicial enforcement of Seizure Notice, violation of Amendment 14, section 5, of the United States Constitution.

This action occurred when Defendants made False Claims the Personal Property Tax was due pursuant to the claim for personal property tax 99-20-012-450, of the personal property described in paragraph 5, for the years 1998, 1999, 2000, 2001, and 2002 by Defendants. This was supported by Affidavit for the taking of the Private Property (Nexus between the Defendants) described in the Notice of Property Seizure. See Attached exhibits in support of this action.

The Named Defendants moved under State of Michigan Act 206 of Public Act 1893 for Seizure of the FATALLIS FD O3B, 3014 DOZER W/5' x 12.5' BLADE, CARLISLE EQUIPMENT COMPANY on May 14, 2001,and one International HOUGH 4370007U002012X DOZER painted yellow TD 25D HOUGH with 12'blade, on April 18, 2001, (See Jeopardy Tax Assessment filed with the Washtenaw County Register of Deed's), without a hearing or personal service of the action taken jointly by the named Defendants acting under the color and authority of the Public Acts for the State of Michigan, in Michigan, in the United States, as individual citizens of individual States, and its political subdivision, in this particular action the Charter Township of York acting under the Jeopardy Tax Assessment, all of them

were part of the enterprise. See 18 U.S.C. §§ 1961, 1964.

The actions by The Charter Township of York PATRICK WANTY a.k.a. Patrick Wanty personally, JOHN HARGROVE a.k.a. John Hargrove personally, MICHAEL J. CROSSEY a.k.a. Michael J. Crossey personally, SALLY B. DONAHUE a.k.a. Sally B. Donahue, Treasure, is profiling this class of citizen in the United States, not being a member of the political party of the State of Michigan, and/or a citizen of the individual State of Michigan. the Defendants filing several of notices and demand for taxes by the foreign Charter Township of York and the State of Michigan, in the State of Michigan, for violation of "Ordinance" 44.02, class 251, acting in the name of the Charter Township of York, is unconstitutional in four respects. First, the "Ordinance" is overbroad and vague in that they do not provide adequate notice to "Citizen" Michael Earl Conely Second)and CONELY TRANSPORT, regarding the types of prohibited conduct or use of his private-property in the United States that is used of private-property that was granted by Article IV, §2 Clause 1, Privileges and Immunities of Citizens in the several States, of the United States Constitution. Third) The Charter Township of York and the State of Michigan lack controlling authority over this private property that is in a separate district of territory of Michigan, not being used in Commerce or Trade pursuant to the Commerce Clause of the United States Constitution. Fourth) Plaintiff(s) are no citizens of the individual State of Michigan, and the individual State lacks the authority to tax and/or take private property that is not within its corporate district.

Defendants in personam has engaged in activities in violation of constitutionally protected activities pursuant of Article IV, §2, Clause 1 of the Constitution of the United States. The Defendants singling out of Plaintiff's, and Plaintiff's private property is a violation of Amendment First right of redress and judicial review of the foreign judgment of the Charter Township of York State, in violation of the due process clause that private property shall not be taken pursuant to Amendment Fourteen, sections one and five of the United States Constitution.

The United States Constitution and/or the Constitution for the State of Michigan and the Charter Township of York has no provision for the enforcement of this"Specific-Policy" of"Ordinance" 44.02 upon the private property of Michael Earl Conely or CONELY TRANSPORT. This action by the Charter Township of York its agencies acting in the name of the State of Michigan is without and/or showing of actual interest to the public and/or the citizens of Michigan. Plaintiff(s) was denied due-process and Equal Protection in accordance with Article IV § 2, Clause 1 Privileges and Immunities of Citizens of each State, and the Fourteenth Amendment Section 1 and 5 of the United States Constitution. Four this "Public Act of 1893 of Act 206" adopted by the State of Michigan that York Township has seized and/or Taxed Plaintiff(s) above mentioned equipment was enforced in Washtenaw county, Michigan, was adopted without Judicial clearance by this Three-Judge-Court of the United States as the Law of the Land under the Constitution of the United States of America., and therefore is

not the Law of this Nation, that Petitioner and be held subject to as a Citizen of the United States.

Further, this action by The Charter Township of York PATRICK WANTY a.k.a. Patrick Wanty personally, JOHN HARGROVE a.k.a. John Hargrove personally, MICHAEL J. CROSSEY a.k.a. Michael J. Crossey personally, SALLY B. DONAHUE a.k.a. Sally B. Donahue, Treasure, constitutes an illegal seizure of Plaintiff(s) in personam, private property that is exempt for taxation by the Charter Township of York and/or the State of Michigan. This action is in violation of Petitioner's due-process Right's, Privileges, Immunities, in accordance with Article IV § 2, Clause 1, the Fourth and Fourteenth Amendments. This action of Seizing, Petitioner's private property, and the taking of this private property is in violation of the Treaty of Ghent of 1814, and the Treaty with the Ottawa and Chippewa Nation of 1836 from foreign invasion. The above aforementioned Treaties prohibit the State of Michigan for prosecuting "Citizen" living in Michigan, state. Under theses Treaties the Government for the United States acting by and through the United States Attorney and the United States Department of Justice has a duty and obligation to white settlers in Michigan state of defending these Treaties against Foreign Invasion under Presidential executive orders by George W. Bush.

Plaintiff(s), seek Declaratory and Injunctive relief: 1) that the "Ordinance" 44.02 for York Charter Township and/or Charter Township of York as a creation of the State of Michigan and enforced in the county of Washtenaw, in the

district of Michigan state, in the United States, be declared unconstitutional and Ex-post facto on its face(s) as applied to Plaintiff's; 2) that the operations by The Charter Township of York PATRICK WANTY a.k.a. Patrick Wanty personally, JOHN HARGROVE a.k.a. John Hargrove personally, MICHAEL J. CROSSEY a.k.a. Michael J. Crossey personally, SALLY B. DONAHUE a.k.a. Sally B. Donahue, Treasure, of targeting private-property in Michigan that is exempt by the Preamble to the United States Constitution without a damaged party is unconstitutional. State officers must act independent, not acting in their official capacity and as the injured party without being actually damaged and without-probable cause that a Crime/Quasi-Crime was committed a violation of Article IV § 2, Clause 1, and the Fourteenth Amendment and that such operations cease; that the practice and policy of the State of Michigan . This Charter Township of York enforcing the "Specific-Policy" of the Jeopardy Tax Assessment "Statute"is in fact ex-post-facto in violation of Article I § 10, clause,1 a violation of Treaty-Law pursuant to the Constitution of the United States of America, 1791, as amended. Plaintiff is entitled to be reimbursed for costs paid associated with obtaining the return of this private-property, seized by CHARTER TOWNSHIP OF YORK, and legal expenses, as well as any damages associated with the unconstitutional activities of the Charter Township of York.

Michael Earl Conely, in proper personam, Plaintiff(s), is the legal owner of the, FAYALLIS DOZER, FD03B, DOZER wide 6' X 12.5' Blade, Carltsle Equipment Co., Yellow

Caterpillar 637, #71, SN79P1061, Michigan Tractor & Machine Co and one International HOUGH 4370007U002012X DOZER painted yellow TD 25D HOUGH with 12'blade, that is parked on the private-property that is described in the district of Michigan, in the United States, and is also commonly known as c/o 9473 Warner Road in Michigan. This private-property, FAYALLIS DOZER, FD03B DOZER wide 6' X 12.5' Blade, Carltsle Equipment Co., Yellow Caterpillar 637, #71, SN79P1061, Michigan Tractor & Machine Co. and the one International HOUGH 4370007U002012X DOZER painted yellow TD 25D HOUGH with 12'blade, is not used for trade or commercial business with the individual State of Michigan. This property is believed to have a land patent, under the land patent, Mr. Conely's private property is protected with all Rights, Privileges and Immunities pursuant to this federal instrument of direct taxation, under An Act of the Congrefs of the 24th of 1820, entitled "An act making further provision for the sale of the Public Lands." **(N.R. -1-)**.

Michael Earl Conely, Plaintiff, was virtually deprived of the private use of the property described in the seizure Order by York Charter Township a.k.a. Charter Township of York, The enforcement of this Ordinance 44.00, class 251 of Public "Act", acting under Act 206 of Public Act 1893 for the individual State of Michigan. Michael Earl Conely, Plaintiff, will therefore suffer, irreparable and further injury and loss of personal Rights, Privileges and Immunities as a Citizen of the United States. **(N.R. -1- at page 21)**.

On November 18, 2002, defendants, York Township

and York Township Defendants filed a Motion to Dismiss **(N.R. -13-)**. On December 17, 2002 Michael Earl Conely filed with the Court his Response in Opposition including that the Motion lacked an affidavit in support. On December 27, 2002 the United States Attorney filed an election to intervention **(N.R. -20-)**. This action allowed Michael Earl Conely the right of a criminal investigation of the alleged violation of the laws of the United States.

On January 14, 2003 York Township and York Township Defendants filed a Motion to Dismiss pursuant to F.R. Cv. P. 56 **(N.R.-22-)** this Motion lacked an affidavit in support, and Michael Earl Conely filed his opposition to the Motion to Dismiss. **(N.R. - 27-)**. In response to this action by the named Defendants, Michael Earl Conely filed with the court Motion for the court to limit appearance in this Quasi-in-rem action alleging that the private property is outside of the jurisdiction of the State of Michigan and is exempt from direct taxes of which demisted the private property of Michael Earl Conely. **(N.R. -23-)**. On January 16, 2003 Michael Earl Conely filed with the court a Motion to Strike U.S.A.'s Motion for dismissal of false claims action. **(N.R. -24-)** raising objections that if the U.S.A. declined to elect to proceed, Michael Earl Conely has as a matter of Right to prosecute Qui-tam in the name of the government of the United States as a citizen of the United States citing **United States Term Limits Inc., vs. Thornton, 514 U.S. 779 (1995)**. On February 18, 2003, Michael earl Conely file an in Opposition of the Motion to Dismiss pursuant to F.R.Civ. P. 56 of York Township and York

Township Defendants, alleging defect in pleadings **(N.R. -27-)**. On March 18, 2003, Michael Earl Conely, filed Objections **(N.R. -31-)** and Brief in support at **(N.R. -32-)** to the Report and Recommendations, to Motion to Dismiss pursuant to F.R.Cv. P. 56 by York Township, Motion dismissal of false claims action by U.S.A. Motion to Dismiss by defendants to limit defendants effect of appearance in this quasi-in-rem action. On March 31, 2003, the court adopted the Record and Recommendations of Magistrate Jude Donald A. Scheer . On April 17, 2003 Michael Earl Conely Appealed the Final Decision of Paul D. Borman of which concluded this proceeding in the United States District Court for the Eastern District of Michigan, Southern Division, of the Judicial District of Michigan a creation of the Congress of the United States of America.